

Durham Research Online

Deposited in DRO:

10 June 2014

Version of attached file:

Accepted Version

Peer-review status of attached file:

Peer-reviewed

Citation for published item:

Scarre, G.F. (2013) 'The vulnerability of the dead.', in The metaphysics and ethics of death : new essays. Oxford: Oxford University Press, pp. 171-187.

Further information on publisher's website:

<http://ukcatalogue.oup.com/product/9780199751136.do.UhPYeoNwYy4>

Publisher's copyright statement:

This is a draft of a chapter that was accepted for publication by Oxford University Press in the book 'The metaphysics and ethics of death : new essays' edited by James Stacey Taylor and published in 2013.

Additional information:

Use policy

The full-text may be used and/or reproduced, and given to third parties in any format or medium, without prior permission or charge, for personal research or study, educational, or not-for-profit purposes provided that:

- a full bibliographic reference is made to the original source
- a [link](#) is made to the metadata record in DRO
- the full-text is not changed in any way

The full-text must not be sold in any format or medium without the formal permission of the copyright holders.

Please consult the [full DRO policy](#) for further details.

The vulnerability of the dead

1. If death is the end of us, the extinction of the personal subject, then it seems the merest common sense to suppose that the dead can be neither benefited nor injured. For how could there be a harm or a benefit without an existing subject to be harmed or benefited? If harms set back interests and benefits promote them (cf. Feinberg 1990: xxvii), then neither appears possible in the absence of an interest-holder. Events occurring after a person's death would seem to be too late to have any effect on a person's life. Although an interest that a person had during life (e.g. to bring up her children to be virtuous citizens) may be thwarted after death (the children grow up to be layabouts or bank robbers), crucially this appears to have no effect on her life. This common-sense intuition has been forcefully emphasised by a number of recent writers. For instance, James Stacey Taylor writes that 'the lives of person whose interests are thwarted post-mortem will *not* be affected by such thwarting' (Taylor 2005: 316), while Christopher Belshaw contends that there can be no harm after death, since 'the notion of harm seems to point to some description of your internal condition – it is not as good as it was, or not as good as it would otherwise have been'; and the dead (as distinct from their corpses) plainly have no 'internal condition' (Belshaw 2009: 151).

These writers, and others, consequently reject the influential account offered by George Pitcher and Joel Feinberg that defends the notion of posthumous harm and benefit by claiming that its real subject is not the postmortem but rather the *antemortem* person (Pitcher 1984, Feinberg 1984). This view, if at first sight surprising, relies on the perfectly reasonable idea that the significance of acts and enterprises is often determined by things that happen at a later date. Thus if I devote time and energy to winning selection in the British Olympic tobogganing team or reading for a degree in nuclear physics, my failure to achieve either of these goals renders what I had previously been doing futile effort. Likewise Brown is successfully raising his children to be staunch defenders of the faith if they continue to fight the good fight long after he is dead. Were Brown's offspring to abandon their religion as soon as their father was cold in the ground, then it would be clear that his project had been a fruitless one. Proponents of the Pitcher-Feinberg line point out that no objectionable backwards causation is posited on their account. Posthumous events are not taken to change the past but, rather, to make it the case that certain things were true all along. So it was true at the time that Brown was raising fighters for the faith rather than backsliders, though this could not have been known before his death. The backward light or shadow that posthumous events cast over a life is, so to speak, logical rather than causal. In the words of Walter Glannon, 'the future event of the thwarting of my present interests logically entails that I am now (while alive) harmed, even though I do not know it' (Glannon 2001: 138).

The obvious attraction of the Pitcher-Feinberg view is that it disposes of the problem of the missing subject of posthumous benefit and harm by identifying the indisputably existent antemortem person as their real subject. While the harming event has a posthumous date, the timing of the harm

falls within the subject's lifetime (according to Feinberg, it commences at the point when the subject acquires the interest that is subsequently to be thwarted (Feinberg 1984: 92)). Yet many critics have felt that this 'solution' has too great a whiff of paradox about it. Glannon is typical of writers who object that '[the idea of] harm is best captured, not in terms of the logical notion of entailment between the interest and its being thwarted, but rather in terms of the causal relation between the interest and the state of affairs that thwarts it by obtaining or not obtaining'. Since harm comprises 'a genuine change in the person's intrinsic properties of body and mind from a better-off to a worse-off condition' (Glannon 2001: 138-9), and the living person suffers no such change, it follows that the antemortem subject is not genuinely harmed by anything that takes place after her death. But since there is no post-mortem person to undergo a change for the worse, the very idea of posthumous harm (and benefit) must be rejected.

Although opponents of Pitcher/Feinberg typically claim that their objections command intuitive support, it can hardly be said that common sense is committed to an unequivocal rejection of the possibility that events occurring after a person's death can be good or bad for him or her. Aristotle remarks that someone who enjoys prosperity through much of his life but then, like King Priam of Troy, falls into misfortune in old age is not called 'happy' (*eudaimon*). He cites Solon's authority for the view that all appraisals of the success or failure of a person's life are merely provisional until we can 'see the end' (Aristotle 1100a; 1954: 19). The disasters that overtook King Priam, his family and his city, following the Greek assault in revenge for the abduction of Helen, effectively destroyed everything that Priam cared about, violently frustrating all his projects.

Imagine, however, that Priam had instead died while the Greek invasion force was still at sea, its advent totally unsuspected by the Trojans. In that case Priam would have ended his life able to look back with satisfaction upon a lifetime of fulfilled projects. That Troy and the Trojans were about to suffer catastrophe would not have affected the dying King's 'internal condition' or changed any of his 'intrinsic properties of body and mind' from a better to a worse state. By dying then Priam would have escaped the anguish of seeing his hopes dashed, his fifty sons and daughters slain and his enemies triumphant. Yet it seems distinctly counter-intuitive to suppose that everything would therefore have been all right with him. Whether Priam died shortly before or shortly after the Greeks arrived and started laying waste to his kingdom makes scant difference to the judgement we make of his life, knowing as we do the outcome of the war. ¹ Aristotle himself shares this intuition, writing that 'both good and evil are thought to exist for a dead man, as much as for the one who is alive but not aware of them; e.g. honours and dishonours and the good or bad fortunes of children and in general of descendants' (1100a; 1954: 19). Priam appears a tragic figure even on the scenario in which he dies in blissful ignorance of the fate about to overtake his city; indeed, in one perspective it was worse for him to die before the Greek invasion since it meant that he died deluded. Forthcoming events cast their dark backward shadow, and the Trojan disaster can be regarded as bad for Priam

even if he is no longer alive when it happens. For what appeared to be Priam's solid and lasting achievement, it now transpires, was nothing of the kind.

It is a further question how long after a person's death the fulfilment or thwarting of his interests can make a difference to him. Would it still have been bad for Priam if his city had been destroyed by the Greeks a hundred years later? Arguably it would not; or at any rate not as bad. The reason is that Priam is unlikely to have cared so much about the temporally remote fate of his city and descendants as about their more proximate fortunes, with which he has stronger causal and emotional ties. Such discounting for time may not always be appropriate, however. For instance, a poet who aspired to immortal fame might be more concerned to be remembered two thousand years after his death than a mere two hundred. But Priam's case gives comfort to the supporters of Pitcher and Feinberg by revealing the strength of the intuition that we may legitimately look beyond the termination of his life when estimating a person's goods and ills.

Probably some dissatisfaction with the Pitcher/Feinberg view stems from misunderstanding what it actually asserts. Opponents of the claim that a person can suffer harm posthumously constantly reiterate that there can be no harm in the absence of an existing subject with 'intrinsic properties'. But Pitcher and Feinberg have no quarrel with this claim. Their view is *not* that a person can suffer posthumous harm, but that harming events can occur posthumously. The confusion arises because the question 'Can the dead be harmed?' is ambiguous. It admittedly stretches credulity to assert that something that does not exist can be harmed or benefited. But to say that events occurring after a person's death can be harmful or beneficial to him is to assert a very different proposition. Pitcher and Feinberg attempt to explain how this is possible even though no changes occur to a subject's intrinsic properties after death – when there is no longer a subject to *have* intrinsic properties. Since their claim is that posthumous events affect the well-being of the antemortem subject, it is potentially misleading to describe them as offering a theory of posthumous harm and benefit.

2. Yet there are grounds for some scepticism about the Pitcher/Feinberg view even when it is properly understood. If the case of Priam described above offers some support for it, here is another that doesn't. Imagine a painter – call him Vin Gough – who, though passionately devoted to his art, lacks self-confidence in his talent and craves a critical acclaim which he finds perennially elusive.

Ambitious to produce well-regarded work, he attracts only the scorn of the art-establishment and the laughter of the public. So unpopular, in fact, are Vin Gough's colourful but unconventional representations of chrysanthemums and cornfields that he scarcely ever manages to sell a picture.

Eventually he dies poverty-stricken and unhappy in a garret, firmly believing his life and career to have been a failure. But in the years after his death, changes in taste prompt a critical reassessment and the artist derided by all comes to be viewed as one of the most innovative painters of his day. It is now apparent that Vin Gough had been painting masterpieces although no one had recognised them as

such. Far from being a failure, his *oeuvre* is now held to mark a milestone in Western art, and galleries and connoisseurs pay millions for the privilege of owning his pictures.

Vin Gough's ambition to paint works that win the approval of the best critics would seem amply fulfilled by the posthumous 'discovery' of his work and the acclaim it receives. Therefore, on the Pitcher/Feinberg theory they should count as being good for him, despite coming too late to give him any personal satisfaction. This might be glossed by saying that Vin Gough was successfully doing what he set out to do, even though he didn't know it (and died believing the opposite to be true). Yet it sounds strained to describe the level of the antemortem painter's well-being as being raised by his unwittingly successful pursuit of this end. If *this* is what the Pitcher/Feinberg line implies, then it seems to be operating with a very questionable concept of well-being. For the posthumous fame that awaited the sad and despairing Vin Gough did him – apparently – no good whatever at the time. Had history been different and the painter never attained posthumous celebrity, the miserable conditions of his life would have been exactly the same. The discovery of his work after his death does nothing to make Vin Gough's life go better, even if it enriches many other lives.

The obvious question here is: what is the difference between these cases that makes the difference in our spontaneous reactions to them? The later failure of Priam's projects does appear to have a negative bearing on the quality of his life, whereas the posthumous accomplishment of Vin Gough's ambitions seems to have no corresponding positive impact on the quality of his. Why should this be? Or are our intuitions merely confused and inconsistent? Theorists who reject Pitcher/Feinberg may contend that the intuitions in the latter case are stronger than those in the former, and deserve to be given the precedence. While we might have some inclination to regard the catastrophe that occurs after Priam's death as casting a dark backward shadow over his life, we will more probably be impressed by the inability of the posthumous changes to Vin Gough's reputation to lift his life from the pit of despond. If this is so, the best way to make our ideas coherent is to jettison Pitcher/Feinberg.

However, I think this would be a mistake. Well-being is a complex notion, notoriously hard to analyse, and elements of different sorts contribute to its make-up. If the felt quality of the subject's experiences – roughly speaking, the amount of satisfaction or enjoyment he gets out of life – is the most obvious gauge of his well-being, it is not the only one, and in some lives may not even be the most important. Some people are less concerned to garner subjective satisfactions than to ensure that their lives are directed on objectively valuable ends (or what they consider to be such); and amongst these may be some whose accomplishment will be posthumous – e.g. Brown's goal of raising children to be stalwart fighters for the faith after he is dead. Brown's successfully pursuing this project, even though the success will not be known while he is alive (and thus cannot be a source of satisfaction to him), might reasonably be regarded as good for him, since it means that his life is going as he wishes it to do.

Many philosophers have recognised a distinction between subjective and objective components of well-being, where the former have to do with how his life feels to a subject, and the latter with the quality of the contents of his life as measured by some independent standard of value. So it has become commonplace to remark that an individual might take a lot of satisfaction in what, from a more objective standpoint, may be considered to be fairly worthless activities, while in contrast a life may be filled with valuable activities and projects that fail to give the subject much pleasure. (Parfit has persuasively argued that the life of maximum well-being would be one in which the subject takes his greatest pleasures from the pursuit of highly worthwhile activities [Parfit 1986: 501-02]). Some writers place more importance on the subjective aspects of well-being, others on the objective. A plausible hypothesis is that those who are inclined towards the first line will generally be less sympathetic to the Pitcher/Feinberg view than those who tend towards the second. For views which privilege the subjective aspects of well-being will plainly struggle to explain how posthumous events could matter to the antemortem subject when they make no difference to his subjective experience. By contrast, views which focus on how well a person's acts, desires, projects and ambitions are fulfilled can better accommodate the thought that posthumous events that fulfil or frustrate his various enterprises can affect their antemortem significance. On these accounts, the absence of any awareness of them by the antemortem subject is not a problem, because it is their fruitfulness or futility rather than the consciousness of it which determines their contribution to his well-being.

Note, however, that the preceding paragraph slurs over an important distinction. It is one thing for a person to pursue ends that she believes to be objectively valuable and another for those ends actually to *be* valuable. This raises the question of whether it benefits a person to have any of her goals fulfilled, or only those whose fulfilment is genuinely a good thing. Suppose that the faith which Brown is raising his children to defend is a morally obnoxious one, involving hecatombs of human or animal sacrifice. Or consider Brown's German cousin Braun, whose children, brought up to be lifelong Nazis, retain their fanatical devotion to the Führer long after their father's death. Is the fulfilment of their projects good for Brown and Braun, or are they, on the contrary, damaged by having successfully promoted bad ends?

Because this question concerns people's valued goals in general and not only those with a posthumous fulfilment date, I shall not attempt to settle it here. Different views are possible according to how moralistic one thinks a theory of well-being ought to be. Philosophers who believe that no one can flourish without the moral virtues will not see a person's well-being as being enhanced by the success (antemortem or posthumous) of her morally misguided schemes. (These philosophers will also be equally moralistic about which *subjective* states are genuinely good for us, refusing to allow, e.g., that any pleasure taken in cruelty could contribute to our well-being.) Since the least problematic cases are those in which what a person takes to be valuable either genuinely is so or is at any rate morally neutral, these are the sort on which, for the sake of simplicity, I shall focus in the remainder of this essay.

Sometimes writers arguing about the merits of Pitcher/Feinberg seem to be talking past each other because they have in mind quite disparate conceptions of well-being. As an illustrative example, Steven Luper – a defender of the line – is accused by Christopher Belshaw of providing ‘no reasons’ for his claim that it is good for a person who has invested a great deal of time and energy in the search for a cure for lung cancer within ten years if a cure is found within that period though he is not himself alive to see it (Luper 2004: 69; Belshaw 2009: 141). Belshaw concedes that the researcher *has* an interest in finding a cure for lung cancer but he denies that it could be in any way *in* his interests for a cure to be discovered posthumously. The thrust of his discussion is that posthumous events have no actual or potential impact on the subject’s experience. Imagine, he says, spending years writing a book that is a total flop after your death. It might alternatively have done very well. But – the crucial point – ‘[e]ither way, your experience is the same’ (Belshaw 2009: 144). Belshaw’s criticism of Luper and Pitcher/Feinberg could, though, be regarded as begging the question in favour of a subjectivist understanding of well-being that, whatever may be said for it, is not the only contender in the field.

It is now possible to explain why our spontaneous responses to the cases of Priam and Vin Gough seemed to be out of alignment with each other. The key is that, given the way these examples were described, the more significant features of Priam’s situation were the more ‘objective’ ones, concerning the solidity and durability of his lifetime projects, while in Vin Gough’s case attention naturally focused on the misery of his lifetime experience, which contrasted so ironically with his posthumous celebrity. Thus the suspected intuitional incoherence turns out to have been more apparent than real. It is not just that our leanings towards one or another account of well-being may affect our attitude to the Pitcher/Feinberg line. The fact is that, unless we are to be narrowly and dogmatically assertive that *either* an objectivist *or* a subjectivist view of well-being is the only correct one, we can afford to admit that, in different cases, objective and subjective elements can vary in degree of importance. So we might hold that what mattered most in Priam’s case was the tragic transience of the literal and metaphorical castles he had built, whereas in Vin Gough’s the most salient feature was the painful, unrelenting *lifetime* disappointment of his hopes and dreams.

One could conceive of these cases being different. King Priam might have been chiefly interested in living a selfish life of idle luxury amidst his obedient and obliging subjects, caring little for what would befall his city or his family following his death. ‘I’m not really bothered about what happens to Troy afterwards,’ he might have said, ‘provided that I can go on enjoying life up to my dying moment. After that, if the sky falls, it’s no skin off my nose.’ This sybaritic Priam is a morally less attractive character than the tragic figure familiar from the Greek stories, but the narrowly subjective nature of his interests does at least protect him from being harmed in respect of them by posthumous events. Troy’s prosperity mattered to *this* Priam only because it served to sustain his own indulgent lifestyle; after his death the city’s fate would be unimportant. An ‘alternative’ Vin Gough, on the other hand, with more confidence in his own powers to produce great art and relatively unconcerned

about his lack of critical success during life, might have painted his works for a posterity which he was sure would one day appreciate them. When posterity *does* come to appreciate them, this is genuinely good for the antemortem subject, fulfilling his major lifetime ambition. Were people *never* to value them, this would be bad for this Vin Gough, since it would render his painting in vain, a sad case of artistic misadventure. The Pitcher/Feinberg line thus makes much better sense of this revised version of Vin Gough's case than it did of the original.

It is often claimed that the satisfaction of some of our desires and ambitions is more plausibly said to be good for us, or in our interests, than the satisfaction of others. If I desire to win the lottery and do in fact win it, that result is more clearly good for me than if I desire that you win the lottery and you win it. Moreover some desires are so trivial, transient or disconnected with the things we really care about that their coming to pass seems to make no, or a negligible, difference to our well-being. The thought that the fulfilment of some of our desires is more significant for our interests than that of others has been deployed against Pitcher and Feinberg in the following way. Some of the causes to which a person may devote herself in life, e.g. finding a cure for lung cancer or saving Venice, are not concerned with herself, in the sense that their accomplishment would serve other, or other people's, interests rather than her own. So even if (to borrow Belshaw's words) a person's desire that Venice should be saved is 'sustained, ... fully embedded in [her] life, realistic, and has involved investment and sacrifice', the problem is to see how the preservation of Venice for many centuries after her death can properly be described as being good for her (Belshaw 2009: 141). Douglas Portmore puts the same point succinctly: 'It is only the non-fulfilment of certain desires, those that pertain to one's own life, that negatively affect one's welfare' (Portmore 2007: 28). The claim that the well-being of the antemortem subject is raised by the fact that Venice will last to be enjoyed by people in future ages is alleged to be far-fetched, even granting that this outcome had been a major goal of her life. Well-being may have its objective components, but it is stretching things to say that a person's life is made objectively better by the posthumous obtaining of circumstances that appear so remote from her.

But are they really remote? Doesn't that depend on how closely the subject identified herself with the aim of saving Venice? If preserving Venice provided a major part of her *raison d'être*, then it sounds much less unreasonable to say that the posthumous fate of the city impacts on her well-being, as rendering her life successfully or unsuccessfully spent. It is true that there might be rather few people who would identify themselves exclusively with a project that, however worthy in itself, has as little to do with the normal economy of a human life as this one has; most of us have a range of more intimate and personal concerns. A person who saw herself as a helper-to-save-Venice and not much else would strike us as rather inhuman in the narrowness of her interests and her lack of significant human relationships. But if such she was, then the fortunes of Venice after her death *would* cast backward light or shadow over her life, making it to have been more or less successful. If the Serenissima were to sink beneath the waves a few years later, this public tragedy would also mark a private failure. If, instead, the city were saved for centuries more, then that would have a positive

impact on her well-being antemortem. Yet this judgement is consistent with the claim that the restricted nature of her interests sets a ceiling to the extent to which her life can qualify as a life well spent. While the long-term survival of Venice enhances her antemortem well-being, a life lived differently – say, where other interests were pursued alongside the commitment to Venice – could plausibly be assigned a higher level of well-being overall.

Aristotle's observation that 'the fortunes of descendants and of all a man's friends' can posthumously make a difference to his happiness reminds us of a rather more common kind of future-directed concern (1101a; 1954: 22). Presumably Aristotle desired that his own son Nicomachus would be happy after his father's death. This is not a desire that strictly pertains to Aristotle's life (as Portmore would demand); it rather pertains to his son's. However, in view of his parental relationship its fulfilment might still seem better for the antemortem Aristotle than that of any more impersonal desire, such as a desire for the saving of a city. Brad Hooker has proposed, more liberally, that the fulfilment of a desire is good for a person when the state of affairs desired is 'desired under a description that makes essential reference to an agent' (Hooker 1993: 212). Aristotle's desire that Nicomachus should be happy after his father's death looks at first sight like a desire of this kind. Yet consider that parents may love their children because they are their children yet not love them *as* their children; instead they may love them for themselves. Many people would say that this is the purest kind of love, where the objects of affection are loved for their own sakes rather than on account of their connection with the lover. Therefore neither the description of Nicomachus as 'my son' nor any other self-referring phrase need have entered essentially into the propositional content of Aristotle's desire. Aristotle may simply have wished that Nicomachus would live happily for as many years as befits a young man in contrast with an old one. Should we in that case conclude that Nicomachus's living happily for twenty years after Aristotle's death could have made no difference to his father's well-being? But this, in Aristotle's own words, would seem 'a very unfriendly doctrine' (1101a; 1954: 22). If Aristotle, Pitcher and Feinberg are correct that the fortunes of a person's children or friends after his death can impact on his well-being, it seems perverse to suppose that this can only happen where the love or concern is of the 'impure' type, involving desires for their happiness whose propositional content makes essential reference to their status as '*my son*' or '*my friend*'.

Rejecting the view that the fulfilment of desires is only good for a person in the case of desires whose propositional content makes essential reference to him allows us to acknowledge a much greater range of posthumous desire-fulfilments as potentially contributing to a person's (antemortem) well-being. This is not to say that the fulfilment or thwarting of just *any* desire that a person happens to have has a bearing on his welfare; as remarked above, some desires are too slight, fleeting or unstable for their fulfilment or lack of it to have an impact. (We should, however, resist Portmore's claim that since any desire, given enough time, is liable to change or fade away, no posthumous fulfilment or thwarting of a desire should be considered to have a bearing on the well-being of the antemortem subject [Portmore 2007: sect.3]. Even if this questionable psychological premise should

be true, many actual desires are sufficiently robust and persistent for their posthumous fulfilment to be plausibly held to be good for the antemortem subject.)

3. In earlier writing I proposed that posthumous alterations in a person's reputation should be thought of as relational shifts of the kind commonly designated as 'Cambridge changes', which depend on changes in the intrinsic properties of other things (Scarre 2007: 105-10). The stock example of a Cambridge change is that from being a wife to being a widow which occurs when a woman's husband dies; in this case the woman herself remains unchanged in respect of her intrinsic, i.e. non-relational, properties but her husband's death changes her relationship to him. Intriguingly, Cambridge changes can happen even to things that no longer exist, such as the dead, in virtue of changes to the intrinsic properties of other, existing things (cf. Ruben 1988: 232-3). So when Pope John Paul II died and his successor was elected, his predecessor Pope John Paul I Cambridge-changed from being the penultimate to being the pene-penultimate pontiff to occupy St Peter's chair. In the same way if, some years after his death, the formerly neglected Van Gogh becomes recognised as a great painter, the change to him is of the Cambridge variety, occurring in virtue of an alteration in the tastes of the art-loving public. This example reminds us that although a person may be gone from the world, he can still be the intentional object of thoughts, feelings, praise, blame and a range of other attitudes. Moreover, since people care about the intentional attitudes that others hold towards them both in life and after death, they may view with pleasure or foreboding prospective posthumous Cambridge changes in those attitudes. For example, Jane may fear that after her death a jealous rival will spread slanders about her, damaging her reputation with friends and family. The thought of the potential posthumous Cambridge change from being honourably to dishonourably regarded at a time when she will not be around to rebut the slanders may cause her severe mental pain.

The possibility of posthumous Cambridge changes, and the fact that antemortem subjects can and do view these with attitudes such as hope, fear, anxiety, longing or loathing, initially appears to support the case for posthumous harms and benefits. That prospective posthumous Cambridge changes seem desirable or undesirable to their subjects antemortem appears to be reason for regarding them, when they occur, as genuinely harmful or beneficial. Yet a sceptic might complain that this question-beggingly supposes that subjects are *right* to look on any posthumous changes in this light. While it may be common for people to believe that Cambridge changes of which they are the subjects after death can be genuinely good or bad for them, it does not follow that they are. What good or ill can it really do a person if, say, others think well or badly of him after his death? Perhaps we confuse real with intentional objects, and suppose that we can be harmed or benefited *qua* intentional objects though we have ceased to exist as real ones. Once again, it is the non-existence of the subject at the time that the putative harms or benefits occur that poses the problem.

The lacuna in the theory, however, can be filled by coupling it more firmly with the Pitcher/Feinberg line. By stressing that it is the *antemortem* person who is benefited or harmed by

events occurring posthumously, now construed as Cambridge changes, the sceptic's 'no subject' worry can be allayed. Since the antemortem subject is the flesh and blood person, there is no need to suppose, implausibly, that the subject of posthumous harm or benefit must be the intentional object in the minds of the survivors. If Jane's malicious rival succeeds after her death in damaging Jane's reputation with her untruthful tales, then this is bad for the antemortem Jane in so far as she is the subject of a failing ambition to be thought well of by others irrespective of the date. One might conceivably hold that Jane is unwise to care much about how people think about her after her death; but probably rather few of us are wholly indifferent about our posthumous reputations, at least amongst friends and loved ones. Because man is a social animal, a major part of his good consists in his standing in certain relationships towards his fellows, including such intentional relationships as being respected, admired and loved. It would be very odd to care what people thought of us, but only so long as we were alive. (To test this statement, think how you would feel about a person with whom you enjoy mutually loving relations coming to look on you with hatred or loathing after your death, having been induced to change her view of you by some ingenious enemy.) Love and respect are not relations that we can complacently look forward to as ending with death. Where, through malice or mischance, they founder posthumously, then their status during life is damaged too; the hope for their own continuation that is in part constitutive of them turns out to have been a hope that would be dashed.

4. Something superficially resembling the Pitcher/Feinberg view was adumbrated by Kant in some pregnant, if undeveloped, remarks in the *Metaphysics of Morals*. In a section entitled 'Leaving behind a good reputation after one's death', he suggests that 'Someone who, a hundred years from now, falsely repeats something evil about me injures me *right now*; for in a relation purely of rights, which is entirely intellectual, abstraction is made from any physical conditions of time' (Kant 2001: 112n; my emphasis).² This proposal chimes with Pitcher/Feinberg in so far as it represents a posthumous slander as harming the antemortem subject (the obvious rendering of the remark that such a slander 'injures me right now'). But unlike them Kant construes the harm done as having no specific temporal index ('abstraction is made from any physical conditions of time'). This may suggest that he thinks of it as timeless, but it is more likely that he holds it to be a harm *at all times*, including the present moment ('right now'), a hundred years before the slander is delivered. Implicitly, it was also a harm in the days of the dinosaurs and will still be one after the earth has become a burnt cinder. It is a harm, too, at the very time that the slanderous words are spoken. Kant does not plump for the Pitcher/Feinberg identification of the antemortem person as the sole subject of the harm, since on his account the injury, being eternal, affects the subject at all times, including the posthumous moment at which the offending words are uttered.

Unfortunately Kant seems to be unaware of the problem of the 'missing subject', or at least to underestimate its gravity. But his frustratingly brief discussion does gesture towards two possible

options for tackling it (other than the Pitcher/Feinberg strategy). The first is to take a leaf out of the book of some metaphysicians of time and hold that the subject himself exists eternally. ‘Eternalists’ take the past and future to be equally real with the present and consider existence at different points in time to be analogous to location at different points in space. According to eternalism, if *x* exists at some time, then it is true at all times to say that *x* exists, where the latter sense of ‘exists’ is an eternal one and the former sense is temporally restricted.³ Therefore when a person ceases to exist in the temporally-restricted sense, he continues to exist in the eternal sense; for though he no longer exists in the present, he still exists in the past. The difference between the two senses of ‘exists’ can be illustrated by contrasting unicorns and dodos. While unicorns, since they never existed in the temporally-restricted sense, do not exist eternally, dodos exist in the latter sense because they once existed in the former. Yet whatever merits eternalism may have as a general theory of existence, it sounds far-fetched to assert that existence in the ‘eternal’ sense can supply the right kind of subject to be credibly ascribed posthumous harms or benefits. It may have been bad for the dodos that the last surviving members of their species on the island of Mauritius were eaten by sailors some three centuries ago, but this hardly supports the claim that there is in any relevant sense a class of currently-misfortunate dodos. (It would also become much harder to explain just why extinction was such a tragedy for the dodos, if dodos retained some kind of existence.)⁴ To be harmed or benefited plausibly requires that a subject exist in the temporally restricted sense, and it is unlikely that Kant, with his penchant for ontological economy, would have countenanced the idea of posthumously harmed or benefited subjects who exist only in the ‘eternal’ mode.

The other option is to propose that it is humanity itself that is injured by such things as posthumous slander. It might be objected that humanity, in the sense of the quality of being human, is not itself something capable of being injured or offended; but this difficulty can be removed by taking ‘humanity’ instead as a collective term for all human beings. The claim would then be that *all* human beings are affronted when a posthumous slander is uttered against an individual, because we are all treated with implicit disrespect when a fellow human being – one with whom we share a common human nature – is not shown the respect due to him *qua* human. More broadly, any moral offence against a human being is an offence against all.⁵ Kant shows strong leanings towards this view when he cites the shared humanity of the target of a posthumous slander and of a would-be apologist as the ground which entitles the latter to speak in the defence of the former. That he thinks that all are affronted when the dead are slandered seems implicit in his remark that rebutting such slanders is not merely a moral duty but also the ‘right of humanity as such’ (Kant 2001: 112).

But if Kant took this view, he must have seen it as supplementing rather than supplanting that of the individual victimhood of the posthumous subject of slander. For he explicitly says that someone who takes up the cudgels on behalf of a slandered dead subject can ‘rightly assume that the dead man was wronged by it, even though he is dead, and that this defence brings him satisfaction even though he no longer exists’ (ibid.). The apologist may be speaking for humanity, but he is also speaking for the

subject who can no longer defend himself. But, if the eternalist option is rejected, then it seems that Kant's only hope of making this thought intelligible lies in resorting to a Pitcher/Feinberg account that identifies the antemortem person as the primary victim of the harm of the slander. And that Kant would not have found this counter-intuitive (had he thought of it) is clear from his claim that the living subject of a posthumous slander is already injured a hundred years before the fact. 6

5. So far in this essay I have concentrated on the question of whether posthumous *harm* is possible, and have side-stepped the related question of whether the dead can be *wronged*. At first sight it may seem easier to grant that the dead can be wronged than that they can be harmed or injured, since the absence of a current subject to be affected for the worse seems less of a problem when we consider those wrongs that do no actual harm. So if I tell unflattering lies about someone who never finds out how I have spoken nor suffers any other ill consequences from my slanders, I may be said to have wronged him even though I do not harm him. If he should now be dead, I still wrong him by saying such things about him; and it would make no difference to my moral culpability if, when I spoke, I did not even know whether he was quick or dead. Or so one might think. Yet the problem of the 'missing subject' has not really gone away. It is true that certain things (e.g. telling lies or breaking promises) could be said to be wrong *tout court*, breaches of the moral law as conceived by Kant; and it might be claimed that spreading slander about the dead is wrong because spreading slander is always wrong. But if we pose the question whether slandering a dead person also wrongs *that person*, the problem of the subject arises just as it does when we ask whether the dead can be harmed. For there is no presently existing subject to be wronged, anymore than there is a current subject capable of being harmed.

Accordingly, Taylor has argued that 'the claim that a person has wronged the dead can be understood as a claim about wrongdoing that *refers* to the dead, where such reference does not imply that the dead person so referred to has been wronged' (Taylor 2005: 319). Such wrongdoing is merely of the 'Kantian' variety, a breach of moral law. 7 Nevertheless there is a resilient intuition that the dead can be wronged (and not merely that there can be 'wrongdoing that *refers* to the dead'). If I break a promise I make to someone on his deathbed to look after his children, or I falsify his will in order to get my hands on his fortune, then I wrong him (along perhaps with other living people). Again, the only satisfactory way to vindicate this intuition and beat the 'no subject' difficulty is to pull the wrong forward into life and identify the antemortem person as the wronged subject.

What wrongs may be posthumously done to a person depends, as with harms, on his lifetime interests and commitments. Someone who didn't care what happened to her corporeal remains would not be wronged if we donated them to medical research, unlike another who had made clear her objection to having her own so used. Moral dilemmas can arise in cases where a person believes, but others may not, that certain modes of treatment of her remains after her death will be bad for her. For instance, most archaeologists believe that disturbing ancient burials does no harm at all to the people

whose remains they exhume, but their view may contrast starkly with that once held by the subjects themselves. In some cultures, interfering with the bodies or bones of the dead has been thought to cause harm to their spirits or ghosts, and members of such cultures have often gone to great lengths to ensure that their remains should be protected against grave-robbers and other ‘trouble-tombs’. If people are deemed to have a moral right to determine what shall be done with and to their remains, then archaeologists, even if they correctly believe they do no harm to the spirit world, may still be wronging the dead when they disturb their burials in defiance of their wishes.⁸ Additionally they may be held to harm the dead antemortem by rendering vain their lifetime aspiration to lie undisturbed in the grave.⁹

It is worth remarking, in conclusion, that although harms and wrongs need to be distinguished, they are sufficiently intimately related in practice to make it desirable that accounts of posthumous harming and posthumous wronging should proceed on similar lines. Feinberg notes that the word ‘harm’ is little more than a hook on which a large variety of things can be hung, though not everything that we might find unpleasant (such as eating a badly cooked meal, having dental surgery, or seeing an offensive poster) is appropriately described as harming us.¹⁰ Yet a cook who deliberately served us a disgusting meal would seem to differ only in degree of malice from another who intentionally set out to make us sick (an undeniable harm); if the former cook merely wronged us, the wrong was not far removed from harm. Likewise, offending or insulting a person, though often classed as instances of wrong rather than harm, may cause considerable mental pain and be meant to do so. And while not all harms are wrongs (some, for instance, are accidental), most deliberate causing of harm is also wrong. If, therefore, we allow – as I have argued in this paper that we should – that antemortem persons can be harmed by posthumous actions and events, then it is in the interests of theoretical economy to offer a similar account, *mutatis mutandis*, to explain how antemortem persons can also be wronged.

Acknowledgements

I am very grateful to James Stacey Taylor, the editor of this volume, for incisive comments on an earlier draft of this essay. I should also like to thank Professor Narita Kazunobu and the members of the moral psychology research group at Keio University, Tokyo, for their very stimulating discussion of its themes during a seminar in September 2009.

Notes

1. In the actual legend, of course, Priam endured ten years of bitter conflict before the city fell as a result of the stratagem of the Trojan Horse.
2. Thus Mary Gregor’s translation. The German word translated as ‘injures’ is *beleidigt*, more accurately rendered as ‘offends’ or ‘abuses’, but the significant point is that Kant takes the timing to be ‘right now’ (*schon jetzt*), during the subject’s lifetime.

3. I am indebted for this formulation to Mikel Burley (private communication). For further discussion of eternalism and its implications for the debates over the badness of death and the possibility of posthumous harm, see Bradley 2009: ch.3.
4. It is in fact more plausible to adopt a Pitcher/Feinberg angle on this avian tragedy and identify the once-living dodos – and perhaps especially those of the last few doomed generations – as the real subjects of the harm done by the hungry mariners. They were birds whose interest in the transmission of their genes was going to be frustrated.
5. Does ‘all’ include the dead and the unborn? Kant would probably say yes in both cases, in view of his claim that the relations in which ‘men stand as intelligible beings’ to one another hold in abstraction from ‘everything belonging to their existence in time or space’ (Kant 2001: 112n). However, to avoid further ‘missing subject’ problems, it would be advisable for him to add that it is only when they are alive that they are offended.
6. Note, however, that in cases where the living person has made it clear that he couldn’t care less what people will say about him after his death, posthumous slanders may – *pace* Kant – do him neither harm nor wrong, however they may offend humanity.
7. To clarify his position, Taylor suggests that putative wrongings of the dead are really to be thought of as resembling attempts at wronging a living person that for some contingent reason cannot succeed – e.g. where one man attempts to rob another by putting his hand in his empty pocket (*ibid.*). Just as you cannot steal money that isn’t there, you cannot wrong someone who isn’t there. But this analogy is faulty, since the reason why the dead cannot be wronged seems weightier than a merely contingent one: one could attempt to steal money that *might* have been in someone’s pocket but it seems metaphysically impossible to wrong a non-existent subject.
8. There cannot, however, be an indefeasible right to have one’s wishes for one’s remains respected. Mill’s harm principle plausibly has a bearing here. It would not be unreasonable for my executors to ignore my instructions for my ashes to be scattered on the summit of Mount Everest, in view of the difficulty and expense that this would entail. And individual graves and occasionally whole cemeteries may have to be removed when they pose a health risk to the living, or occupy land urgently required for agriculture or settlement.
9. It may be that a person cannot be wronged *antemortem* by an act that occurs *postmortem* unless she is also harmed *antemortem* by that act (Taylor has suggested this to me in a private communication). There are, however, some apparent counterexamples. Suppose that the conscience-stricken dying Jim extracts from his best friend, John, a promise to reveal to the world a serious crime he had once committed. If, wishing to spare Jim’s reputation, John fails to keep that promise, he might be said to wrong the *antemortem* Jim even as he *saves* him from harm. But against this it could be held that John does *some* harm to the *antemortem* Jim

by rendering Jim's request a vain one. While the claim may be hard to prove, I suspect that there is rarely, if ever, antemortem wronging without antemortem harming of some kind.

10. See Feinberg 1984: ch.1 for an extended discussion of harm and its varieties.

Bibliography

Aristotle 1954. *Nicomachean Ethics*, tr. by Ross, D. Oxford: Oxford University Press.

Belshaw, Christopher 2009. *Annihilation: the Sense and Significance of Death*. Stocksfield: Acumen.

Bradley, Ben 2009. *Well-Being and Death*. Oxford: Clarendon Press.

Feinberg, Joel 1984. *The Moral Limits of the Criminal Law. Volume One: Harm to Others*. Oxford: Oxford University Press.

Feinberg, Joel 1990. *The Moral Limits of the Criminal Law. Volume Four: Harmless Wrongdoing*. Oxford: Oxford University Press.

Glannon, Walter 2001. 'Persons, lives, and posthumous harms'. *Journal of Social Philosophy*, **32**, 127-42.

Hooker, Brad 1993. 'A breakthrough in the desire theory of welfare', in J. Heil (ed.) *Rationality, Morality, and Self-Interest: Essays Honouring Mark Carl Overold*. Lanham, MD: Rowan and Littlefield.

Kant, Immanuel 1991. *The Metaphysics of Morals*, tr. by Gregor, Mary. Cambridge: Cambridge University Press.

Luper, Steven 2004. 'Posthumous harm'. *American Philosophical Quarterly*, **41**, 63-72.

Parfit, Derek 1984. *Reasons and Persons*. Oxford and New York: Oxford University Press.

Pitcher, George 1984. 'The misfortunes of the dead'. *American Philosophical Quarterly*, **21**, 183-8.

Portmore, Douglas 2007. 'Desire fulfilment and posthumous harm'. *American Philosophical Quarterly*, **44**, 27-38.

Ruben, David-Hillel 1988. 'A puzzle about posthumous predication'. *Philosophical Review*, **97**, 211-36.

Scarre, Geoffrey 2007. *Death*. Stocksfield: Acumen.

Taylor, James Stacey 2005. 'The myth of posthumous harm'. *American Philosophical Quarterly*, **42**, 311-22.

Taylor, James Stacey 2008. 'Harming the dead'. *Journal of Philosophical Research*, **33**, 185-202.